IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8769 OF 2005

Datta Tiles Factory .. Petitioner

Vs.

Bhudargad Nagari Sahakari
Pat Samstha Ltd. ..Respondent

Mr.G.S.Godbole i/b M/s.M.P.Rege and Co. for the petitioner

Mr.U.B.Nighot for the respondent

WITH

WRIT PETITION NO.8788 OF 2005

Bharat Balkrishna Patil .. Petitioner

Vs.

Bhudargad Nagari Sahakari
Pat Samstha Ltd. ..Respondent

WITH

WRIT PETITION NO.8789 OF 2005

Sou.Mangal Bharat Patil .. Petitioner

Vs.

Bhudargad Nagari Sahakari
Pat Samstha Ltd. ..Respondent

Mr.A.S.Khandeparkar i/b Khandeparkar and Associates for the petitioner

Mr.U.B.Nighot for the respondent

CORAM : S.U.KAMDAR, J
DATED : 22ND DECEMBER, 2005

P.C.:

1. In these three writ petitions the orders passed by the Co-operative Appellate Court, Pune is questioned. By the impugned orders the Co-operative Appellate Court has set aside a decree passed by the Judge Co-operative Court No.2, Kolhapur. In view of the fact that there are no infirmities in these orders passed by Co-operative Appellate Court, I would have dismissed these writ petitions without passing a detail order. However, in view of the fact that I have noticed certain disturbing features in the orders passed by the Co-operative Court and though the said orders are set aside by the Appellate Court I prefer to pen down certain observations and reasons because I am of the opinion that certain actions are required to be initiated thereon. Few facts of the case are as under:

2. These three suits are filed against the

respondent no.1 which is a Credit Co-operative Society Ltd. The first suit is filed by a partnership firm know as Datta Tiles Factory who has availed certain facilities from Respondent no.1 Society and according to respondent no.1 inspite of term loan amount taken from respondent no.1 of Rs.40.0 lacs and cash credit facility obtained of Rs.73.50 lacs and after making certain part payments still large amount of money was still outstanding as due and payable by the petitioner to the respondent no.1 society. According to the respondent no.1 society the claim amount which was outstanding was more than Rs.1 crore. Similarly the other parties have also filed a suit against respondent no.1 Credit Co-operative Society. The prayers in all the three suits are identical and therefore the prayers only in the first suit which is a subject matter of Writ Petition no.8769 of 2005 are reproduced hereunder:

> a) this Hon'ble Court be pleased to direct the Defendant to give proper accounts details.
>
> b) after the settlement of accounts and permission may be given to repay the amount in 20 equal annual instalments and exemption from future interest be granted.

c) that perpetual injunction order be granted against the defendant from deducting the loan amount from the disputants.

d) Cost of the suit may be granted.

e) for such further and other reliefs as the nature and circumstances of the case may warrant.

f) for any amendment in the pleading.

3. In my opinion, the suit of the nature which has been filed by each of the borrowers against the Credit Co-operative Society itself was not maintainable and based on no cause of action. It is well settled that whenever the Credit Co-operative Society or a bank or any other financial institution seeks to recover the amount due and payable then before the order or decree is passed for recovery of said amount the court normally ascertains the amount due and payable by the borrower to such bank or credit society and therefafter only passes necessary orders as per the ascertained claim. In that light of the matter, to file a suit for the purpose of ascertaining of true and proper accounts itself is not necessary. However, the present suit does not end at the same

but further prayers are that the court must direct the Credit Society to give 20 equal annual instalment and exempt the petitioner from future interest and perpetual injunction restraining the bank or credit society to initiate any proceedings from recovering the loan amount from the petitioner. These three suits were heard by the learned Judge Mr.N.S.Lohare, Co-operative Court No.2, Kolhapur and the Judge has passed an identical order in all three suits which is reproduced as under:

> "The dispute Exh.1 is allowed and following award is passed:
>
> 1. Opponent Society is hereby directed to provide proper true accounts by charging simple agreed rate of interest till 31.3.2001 on the principal disbursed loan amounts to disputant and provide a fresh account extracts and permit to disputant to repay legal loan dues as discussed supra in the judgment, and further interest is hereby exempted.
>
> 2. The disputant is entitled to repay the proper settled loan dues by charging simple rate of interest upto 31.3.01 in equal 20 yearly instalments.
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> 3. It is made clear that if disputant defaulted any three instalments then opponent society is at liberty to recover whole loan dues at once in lumpsum from disputant.

> 4. Opponent Society is directed to appropriate the repaid amounts to original principal amounts and after settled proper accounts the recovery be made as per directions given supra.
>
> 5. Considering the nature of the case parties to bear their own costs.
>
> Award be drawn accordingly.

4. Thus, the learned Judge has passed a decree directing the bank to provide proper and true accounts by charging only simple rate of interest till 31.3.01. Admittedly the petitioner has committed defaults in payment of principal amount and interest and thus, Co-operative Credit Society was entitled to charge compound rate of interest. Further directions are given to issue fresh extract of accounts and permit the petitioner to repay legal dues in 20 equal annual instalments without future interest being charged. He has further provided that if there are any three defaults then respondent no.1 will be entitled to recover loan dues in lumpsum from the petitioner.

5. It is this order which was passed by the learned Co-operative Court Judge was under challenge before Co-op.Appellate Court. In my

opinion, the orders which are passed in these three suits by the learned Co-operative Court Judge is per se perverse and atrocious. Firstly, after obtaining proper accounts to direct the credit society to wait for 20 years to recover their dues though admittedly it had become due and payable and further direct not to charge any interest for the entire period of 20 years when instalments are paid, is not only without Jurisdiction of the court, particularly Co-operative Court No.2 but is absurd and obviously passed for the consideration which are other than Judicial consideration.

6. The reasoning which are given by the learned Judge in the impugned order does not inspire any confidence whatsoever in judicial mind. It is writ large on the face of the order passed by the learned Trial Court that the orders are passed for various different reasons than that seems or appears to have been stated in the impugned order. In so far as payment of 20 years equal instalment is concerned, the only reason given by the learned Judge is as under:

> "So far as the relief of instalments is concerned I find that the loan dues are of huge amount and due to slack of financial position of the present market as well as due to difficulties arises in the business of disputant it is just and proper to permit the disputant to repay the proper settled dues by way of 20 yearly instalments and disputant is entitled to repay the loan dues by 20 yearly instalments. Accordingly, I gave my respective finding in respect of instalments."

7. Undoubtedly, this order has been rightly set aside by the Co-operative Appellate Court and the learned Appellate Court has rightly held that the impugned order is unsustainable in law from any angle of justice, equity and or legal conscience. In view of the fact that I find that the order passed by the Co-operative Court cannot be merely termed as perverse but from the scrutiny of the order it calls for further investigation. I am of the opinion that the proceeding should not be stopped by merely dismissing the Writ Petition.

8. I am of the opinion that first of all suits which were filed by petitioners were frivolous. As I have already held above that no recovery certificate can be issued by the Co-operative Court

under section 101 without scrutiny of the accounts by the bank or the Credit Society. Secondly, after ascertaining the dues due and payable by the debtor no court can grant indulgence of the nature as has been conferred by the learned Judge of the Co-operative Court No.2 i.e. instalments of 20 years in repayment of the loan and that also interest free. In that light of the matter, I am of the opinion that the learned Judge has not only erroneously entertained the suit but also granted decree which is unsustainable in law. The kind of orders passed are of disturbing nature. It is surprising that even after giving 20 years instalment he has not permitted the Credit Co-operative Society to charge the interest which was legitimately due to such Credit Co-operative Society. The Credit Co-operative Society in regular course is entitled to charge interest and not bound to wait for 20 long years for recovery of dues. In that light of the matter, I am of the opinion that the matter requires further investigation.

9. Order is not isolated as similar orders are

passed in all the three suits and the learned Judge has in fact granted verbatim all prayers as pleaded by the petitioners/plaintiffs. I direct the Registrar General to place the matter before the Hon’ble Chief Justice for necessary action.

10. However, I clarify that in an event if the petitioner seeks to approach the bank for repayment of loan by any particular settlement scheme then it will be open to the bank to either accept the same or reject the same in accordance with law and the present order will not come in the way of the bank in accepting the scheme of settlement if any filed by the petitioner. All the three writ petitions are dismissed. No order as to costs.